Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-3691-01
JMMarr

date:

to: Jeffrey M. Galante, Appeals Team Manager
 Jon B. Hales, Appeals Officer

from: Joyce M. Marr, Attorney (LMSB) (Laguna Niguel)
 June Y. Bass, Associate Area Counsel (LMSB)

subject:

EIN: Advisory Opinion on Proper Captions for Forms 872 and 890 and Notice of Deficiency

Income Tax Year:

Statute of Limitations:

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This is in response to your oral request for advice originally made on June 8, 2001, as subsequently modified. This memorandum should not be cited as precedent.

<u>Issues</u>

- 1. Whether the Form 872 (Consent to Extend the Time to Assess Tax) secured for ______ (the Taxpayer) for its tax year ended June 30, ____, is valid.
- 2. What is the proper caption to use on a Form 890 (Waiver of Restriction on Assessments & Collection of Deficiency & Acceptance of Overassessments) to be secured for the Taxpayer's tax year ended June 30,
- 3. To which party should the Internal Revenue Service (Service) issue a notice of deficiency for the Taxpayer's tax year ended June 30,

Conclusions

1. The undisputed facts clearly establish that both the

executed Form 872 to extend the assessment period for the income tax liability of the Taxpayer for the year ended June 30,	;
(b)(5)(AC), (b)(7)a	
(b)(5)(AC), (b)(7)a	
1	

- 2. You should caption the Form 890 to read as follows:

 " (formerly known as), as successor in interest to ."
- 3. The Service should issue the notice of deficiency to "formerly known as , as successor in interest to "formerly known as , as successor in interest to "formerly known as the notice of deficiency to the notice of deficiency

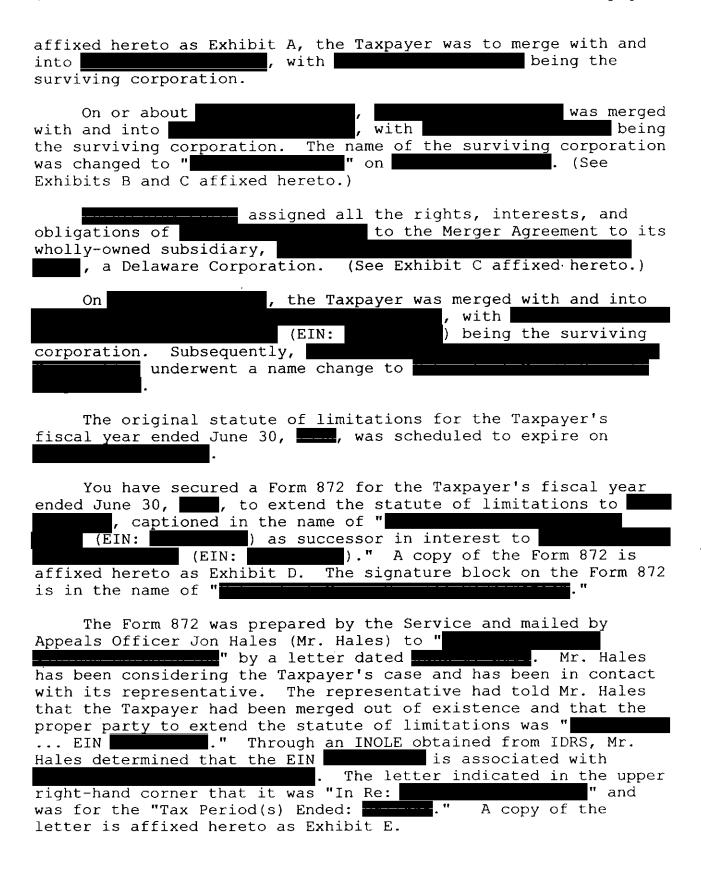
Facts²

The Taxpayer was incorporated in California. It filed a Form 1120, U.S. Corporation Income Tax Return, for the year ended June 30,

On		, an	Agreement	and Pla	an of Reorgan	nization	and
Merger (Me	erger	Agreement)	was ente	red into	by and amor	ng	
			, a C	olorado	corporation	(
),	,					, a	
Delaware o	_	ration (and a wholl	Ly owned	
subsidiary	of [,	the Ta:	xpayer and th	ne	
Taxpayer's	s sha:	reholders.	Pursuant	to the	Agreement, w	which is	

Under the signature of the officer who executes the Form 872, you should type in his or her title and the name "

²Our advice might be different if the facts were different. If the facts which we recite in this memorandum ultimately prove to be inconsistent with your understanding of the facts, or if we have recited facts of which you are not aware, contact this office immediately and do not rely on this memorandum.



According to the INOLE obtained by Mr. Hales and affixed hereto as Exhibit F, was first established on the Service's Master File in ABMFOLI, which we requested be retrieved from IDRS and which is affixed hereto as Exhibit G, also shows that the earliest tax module for is "."

Discussion

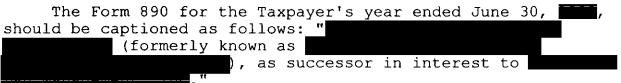
Issue 1

Although a Form SS-10 is not considered to be a contract, courts have nevertheless applied contract principles in determining the validity of consents to extend the statue of limitations because I.R.C. § 6501(c)(4) requires that the parties reach a written agreement as to the extension. Piarulle v. Commissioner, 80 T.C. 1035, 1042 (1983). The term agreement means a manifestation of mutual assent. Piarulle, supra, at 1042. It is the objective manifestation of mutual assent as evidenced by the parties' overt acts that determines whether the parties have made an agreement. Kronish v. Commissioner, 90 T.C. 684, 693 (1988).

In this case, the undisputed facts clearly establish that both the Service and intended the executed Form 872 to extend the assessment period for the income tax liability of the Taxpayer for the year ended June 30, First, the caption on the Form 872 indicates that it is being executed by "as
successor in interest to (EIN:
)." Second, the transmittal letter which forwarded the
Form 872 to for signature
Form 872 to for signature indicated that it was "In Re: for the "Tax
Period(s) Ended: ." Third, the letter was from Mr. Hales
who has been actively considering the Taxpayer's case and had
been in contact with its representative, who told Mr. Hales that
the proper party to execute the form 8/2 on behalf of the
Taxpayer was "Line Line Line Line Line Line Line Line
872 refers to the tax period ended June 30, although
according to the information available on IDRS, it appears that
was not in existence until
the year .
(b)(5)(AC), (b)(7)a

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(b)(5)(AC), (b)(7)a		
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(b)(5)(AC), (b)(7)a		
(b)(5)(AC), (b)(7)a		
Issue 2		



<u>Issue 3</u>

The statutory notice of deficiency for the Taxpayer's tax liability for the ending June 30, , should be issued to " (formerly known as), as successor in interest to "."

This advice has been coordinated with the Office of Chief Counsel. With the rendition of this advice, we are closing our file. Please contact the undersigned at telephone number (949) 360-2688 if you have any questions or comments concerning the foregoing.

JOYCE M. MARR Attorney (LMSB)

Attachments: As stated